

**CITY OF NORTH MIAMI
CONSTRUCTION ENGINEERING & INSPECTION (CE&I)
SERVICES AGREEMENT
(RFQ #29-12-13)**

THIS CONSTRUCTION ENGINEERING & INSPECTION SERVICES AGREEMENT ("Agreement") is entered into this 23 day of September, 2013, between the **City of North Miami**, a Florida municipal corporation with a principal address of 776 NE 125th Street, North Miami, Florida ("City"), and **R. J. Behar & Company, Inc.**, a for-profit corporation organized and existing under the laws of the State of Florida, having its principal office at 6861 SW 196th Avenue, #302, Pembroke Pines, FL 33332 ("Consultant"). The City and Consultant shall collectively be referred to as the "Parties", and each may individually be referred to as a "Party".

RECITALS

WHEREAS, on June 21, 2013, the City advertised **Request for Qualifications No. 29-12-13, Construction Engineering and Inspection (CE&I) Services** ("RFQ"), for the purpose of selecting an experienced, licensed and insured architectural/engineering firm to provide the City with Construction Engineering and Inspection Services for the Arch Creek Bike Path and Pedestrian Bridge Replacement Project ("Project") running along Northeast 135th Street and connecting to the bike path on the Florida International University Biscayne Bay Campus ("Services"); and

WHEREAS, the RFQ was administered in accordance with the State of Florida's Consultants' Competitive Negotiation Act, Section 287.055, Florida Statutes; and

WHEREAS, in response to the RFQ, Consultant submitted its sealed qualifications for the provision of professional Services, and was subsequently selected by City administration as having those qualifications and references most advantageous to the City; and

WHEREAS, on January 4, 2013, the Florida Department of Transportation issued the City a Notice to Proceed with the construction phase and authorized the City to advertise and receive competitive bids from qualified general contractors for the construction of the proposed Project; and

WHEREAS, the City is in need of Services in accordance with the terms, conditions and specifications contained in the RFQ and Contract Documents; and

WHEREAS, the City Manager finds that entering into this agreement with Consultant for the provision of Services, is in the City's best interest and essential for the proper completion of the Project.

NOW, THEREFORE, in consideration of the mutual terms and conditions set forth herein and other good and valuable consideration, the Parties hereto agree as follows:

ARTICLE 1 - RECITALS

1.1 The recitals are true and correct and are hereby incorporated into and made a part of this Agreement.

ARTICLE 2 - CONTRACT DOCUMENTS

2.1 The following documents are incorporated into and made a part of this Agreement (collectively referred to as the "Contract Documents"):

2.1.1 The City's *Request for Qualifications No. 29-12-13, Construction Engineering and Inspection (CE&I) Services*, attached hereto by reference;

2.1.2 Consultant's response to the RFQ ("Qualifications"), attached hereto by reference;

2.1.3 Consultant's proposal in response to the City's request ("Proposal"), attached hereto as Exhibit "A";

2.1.4 Any additional documents which are required to be submitted by Consultant under this Agreement.

2.2 In the event of any conflict between the Contract Documents or any ambiguity or missing specification or instruction, the following priority is hereby established:

2.2.1 Specific written direction from the City Manager or City Manager's designee.

2.2.2 This Agreement.

2.2.3 The RFQ.

2.3 The Parties agree that Consultant is responsible for clarifying any ambiguity, conflict, discrepancy, omission, or other error found in the RFQ prior to Consultant submitting its Qualifications or the right to clarify same shall be waived.

ARTICLE 3 - TERM

3.1 Subject to authorized adjustments, the Term of this Agreement shall be three (3) months or ninety two (92) days from the date specified in the Notice to Proceed, unless terminated earlier by the City. Consultant agrees that the performance of Services shall be pursued on schedule, diligently and uninterrupted at a rate of progress which will ensure full completion within the agreed time for performance. Failure to achieve timely final completion shall be regarded as a material breach of this Agreement and shall be subject to the appropriate remedies available at law. This Agreement shall remain in full force and effect until the completion of Services by the Consultant and the acceptance of Services by the City.

3.2 Minor adjustments to the time for performance which are approved in writing by the City in advance, shall not constitute non-performance by Consultant. Any impact on the time for

performance shall be determined and the time schedule for completion of Services will be modified accordingly.

3.3 When, in the opinion of the City, reasonable grounds for uncertainty exist with respect to the Consultant's ability to perform Services or any portion thereof, the City may request that the Consultant, within a reasonable time frame set forth in the City's request, provide adequate assurances to the City in writing, of Consultant's ability to perform in accordance with terms of this Agreement. In the event that the Consultant fails to provide the City the requested assurances within the prescribed time frame, the City may treat such failure as a repudiation or breach of this Agreement, and resort to any remedy for breach provided for in this Agreement or at law.

ARTICLE 4 - COMPENSATION

4.1 Consultant shall be paid an amount not to exceed Twenty Six Thousand and no/100 Dollars (\$26,000.00) as full compensation for Services, pursuant to Contract Documents. Funding for this Agreement is contingent on the availability of funds and the Agreement is subject to amendment or termination due to lack of funds or a reduction of funds, upon ten (10) days written notice to Consultant.

ARTICLE 5 - SCOPE OF SERVICES

5.1 Consultant agrees to perform Services for the benefit of the City under the special terms, schedules, and conditions set forth in the Contract Documents. Consultant shall perform Services in accordance with that degree of care and skill ordinarily exercised by reputable members of its profession.

5.2 Consultant represents and warrants to the City that: (i) Consultant possesses all qualifications, licenses and expertise required in the provision of Services, with personnel fully licensed by the State of Florida; (ii) Consultant is not delinquent in the payment of any sums due the City, including payment of permit fees, local business taxes, or in the performance of any obligations to the City; (iii) all personnel assigned to perform work shall be, at all times during the term hereof, fully qualified and trained to perform the tasks assigned to each; (iv) the Services will be performed in the manner as described in the Contract Documents for the budgeted amounts, rates and schedules; and (v) the person executing this Agreement on behalf of Consultant is duly authorized to execute same and fully bind Consultant as a party to this Agreement.

5.3 Consultant agrees and understands that: (i) any and all subconsultants used by Consultant shall be paid by Consultant and not paid directly by the City; and (ii) any and all liabilities regarding payment to or use of subconsultants for any of the work related to this Agreement shall be borne solely by Consultant. Any work performed for Consultant by a subconsultant will be pursuant to an appropriate agreement between Consultant and subconsultant which specifically binds the subconsultant to all applicable terms and conditions of the Contract Documents.

ARTICLE 6 - CITY'S TERMINATION RIGHTS

6.1 The City shall have the right to terminate this Agreement, in its sole discretion at any time, with or without cause, upon ten (10) days written notice to Consultant. In such event, the City shall pay Consultant compensation for Services rendered prior to the effective date of

termination. The City shall not be liable to Consultant for any additional compensation, or for any consequential or incidental damages.

ARTICLE 7 - INDEPENDENT CONSULTANT

7.1 Consultant, its employees and agents shall be deemed to be independent contractors and not agents or employees of the City and shall not attain any rights or benefits under the civil service or pension ordinances of the City, or any rights generally afforded to classified or unclassified employees. The Consultant shall not be deemed entitled to the Florida Workers' Compensation benefits as an employee of the City.

ARTICLE 8 - DEFAULT

8.1 In the event the Consultant fails to comply with any provision of this Agreement, the City may declare the Consultant in default by written notification. The City shall have the right to terminate this Agreement if the Consultant fails to cure the default within ten (10) days after receiving notice of default from the City. If the Consultant fails to cure the default, the Consultant will only be compensated for completed Services. In the event partial payment has been made for such Services not completed, the Consultant shall return such sums due to the City within ten (10) days after notice that such sums are due. The Consultant understands and agrees that termination of this Agreement under this section shall not release Consultant from any obligations accruing prior to the effective date of termination.

ARTICLE 9 - INDEMNIFICATION

9.1 Consultant agrees to indemnify, defend, save and hold harmless the City its officers, agents and employees, from and against any and all claims, liabilities, suits, losses, claims, fines, and/or causes of action that may be brought against the City, its officers, agents and employees, on account of any negligent act or omission of Consultant, its agents, servants, or employees in the performance of Services under this Agreement and resulting in personal injury, loss of life or damage to property sustained by any person or entity, caused by or arising out of Consultant's negligence within the scope of this Agreement, including all costs, reasonable attorneys fees, expenses, including any appeal, and including the investigations and defense of any action or proceeding and any order, judgment, or decree which may be entered in any such action or proceeding, except for damages specifically caused by or arising out of the negligence, strict liability, intentional torts or criminal acts of the City, its officer, agents, employees or contractors, which claims are lodged by any person, firm, or corporation.

9.2 Nothing contained in this Agreement is any way intended to be a waiver of the limitation placed upon the City's liability as set forth in Chapter 768, Florida Statutes. Additionally, the City does not waive sovereign immunity, and no claim or award against the City shall include attorney's fees, investigative costs or pre-judgment interest.

ARTICLE 10 - INSURANCE

10.1 Prior to the execution of this Agreement, the Consultant shall submit certificate(s) of insurance evidencing the required coverage and specifically providing that the City is an additional named insured or additional insured with respect to the required coverage and the operations of the Consultant under this Agreement. Consultant shall not commence work under this Agreement until after Consultant has obtained all of the minimum insurance described in the RFQ and the policies of

such insurance detailing the provisions of coverage have been received and approved by the City. Consultant shall not permit any subconsultant to begin work until after similar minimum insurance to cover subconsultant has been obtained and approved. In the event the insurance certificate provided indicates that the insurance shall terminate and lapse during the term of this Agreement, Consultant shall furnish, at least thirty (30) calendar days prior to expiration of the date of the insurance, a renewed certificate of insurance as proof that equal and like coverage and extension is in effect. Consultant shall not continue to perform the Services required by this Agreement unless all required insurance remains in full force and effect.

10.2 All insurance policies required from Consultant shall be written by a company with a Best rating of B+ or better and duly authorized and licensed to do business in the State of Florida and be executed by duly licensed agents upon whom service of process may be made in Miami-Dade County, Florida.

ARTICLE 11 - OWNERSHIP OF DOCUMENTS

11.1 All documents developed by Consultant under this Agreement shall be delivered to the City by the Consultant upon completion of the Services and shall become property of the City, without restriction or limitation of its use. The Consultant agrees that all documents generated hereto shall be subject to the applicable provisions of the Public Records Law, under Chapter 119, Florida Statutes. In the event the Agreement is terminated, Consultant agrees to provide the City all such documents within 10 days from the date the Agreement is terminated.

11.2 It is further understood by and between the Parties that any information, writings, tapes, Contract Documents, reports or any other matter whatsoever which is given by the City to the Consultant pursuant to this Agreement shall at all times remain the property of the City and shall not be used by the Consultant for any other purposes whatsoever without the written consent of the City.

ARTICLE 12 - NOTICES

12.1 All notices, demands, correspondence and other communications between the Parties shall be deemed sufficiently given under the terms of this Agreement when dispatched by registered or certified mail, postage prepaid, return receipt requested, addressed as follows or as the same may be changed from time to time:

For Consultant:	R. J. Behar & Company, Inc. 6861 SW 196 th Avenue, #302 Pembroke Pines, FL 33332 Phone: () - Fax: () -
For the City:	City of North Miami Attn: City Manager 776 N.E. 125 th Street North Miami, Florida 33161

With copy to: City of North Miami

Attn: City Attorney
776 N.E. 125th Street
North Miami, Florida 33161

12.2 Either Party may at any time designate a different address and/or contact person by giving notice as provided above to the other Party. Such notices shall be deemed given upon receipt by the addressee.

12.3 In the event there is a change of address and the moving Party fails to provide notice to the other Party, then notice sent as provided in this Article shall constitute adequate notice

ARTICLE 13 - MISCELLANEOUS PROVISIONS

13.1 No waiver or breach of any provision of this Agreement shall constitute a waiver of any subsequent breach of the same or any other provision hereof, and no waiver shall be effective unless made in writing.

13.2 All representations, indemnifications, warranties and guarantees made in, required by, or given in accordance with this Agreement, as well as all continuing obligations indicated in the Contract Documents, shall survive final payment, completion and acceptance of the Services and termination or completion of the Agreement.

13.3 Should any provision, paragraph, sentence, word or phrase contained in this Agreement be determined by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable under the laws of the State of Florida, such provision, paragraph, sentence, word or phrase shall be deemed modified to the extent necessary in order to conform with such laws, or if not modifiable, then same shall be deemed severable, and in either event, the remaining terms and provisions of this Agreement shall remain unmodified and in full force and effect or limitation of its use.

13.4 This Agreement and Contract Documents constitute the sole and entire agreement between the Parties. No modification or amendments to this Agreement shall be binding on either Party unless in writing and signed by both Parties.

13.5 This Agreement shall be construed and enforced according to the laws of the State of Florida. Venue in any proceedings between the Parties shall be in Miami-Dade County, Florida.

13.6 The City reserves the right to audit the records of the Consultant covered by this Agreement at any time during the provision of Services and for a period of three years after final payment is made under this Agreement.

13.7 The Consultant agrees to comply with and observe all applicable federal, state, and local laws, rules, regulations, codes and ordinances, as they may be amended from time to time.

13.8 Services shall not be subcontracted, transferred, conveyed, or assigned under this Agreement in whole or in part to any other person, firm or corporation without the prior written consent of the City.

13.9 The City of North Miami is exempt from Federal Excise and State taxes. The applicable tax exemption number or certificate shall be made available upon request.

13.10 The professional Services to be provided by Consultant pursuant to this Agreement shall be non-exclusive, and nothing herein shall preclude the City from engaging other firms to perform Services.

13.11 This Agreement shall be binding upon the Parties herein, their heirs, executors, legal representatives, successors and assigns.

13.12 The Consultant agrees that it shall not discriminate as to race, sex, color, creed, national origin, or disability, in connection with its performance under this Agreement.

13.13 In the event of any dispute arising under or related to this Agreement, the prevailing party shall be entitled to recover all actual attorney fees, costs and expenses incurred by it in connection with that dispute and/or the enforcement of this Agreement, including all such actual attorney fees, costs and expenses at all judicial levels, including appeal, until such dispute is resolved with finality.

13.14 All other terms, conditions and requirements contained in the IFB, which have not been modified by this Agreement, shall remain in full force and effect.

13.15 This Agreement may be executed in two or more counterparts, each of which shall constitute an original but all of which, when taken together, shall constitute one and the same Agreement.

[The remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, the Parties have executed this Agreement by their respective proper officers duly authorized the day and year first written above.

ATTEST:

Corporate Secretary or Witness:

By: 

Print Name: Dereth Behar

Date: August 13, 2013

R. J. Behar & Company, Inc., a Florida for-profit corporation:
"Consultant"

By: 

Print Name: Robert J. Behar, P.E.

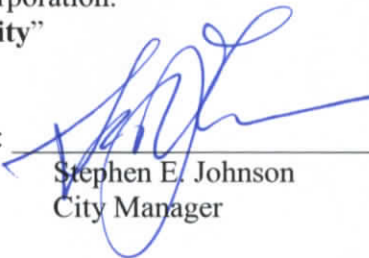
Date: August 13, 2013

ATTEST:

By: 

Michael A. Etienne
City Clerk

City of North Miami, a Florida municipal Corporation:
"City"

By: 

Stephen E. Johnson
City Manager

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

By: 

Regine M. Monestime
City Attorney